

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Section 68.4(a) of the Commission's Rules	)	WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones	)	
	)	
Buffalo-Lake Erie Wireless Systems Co., L.L.C.	)	
Petition for Temporary and Limited Waiver of	)	
Section 20.19(d)(2) of the Commission's Rules	)	

To: The Commission

**BUFFALO-LAKE ERIE WIRELESS SYSTEMS CO., L.L.C.  
PETITION FOR TEMPORARY AND LIMITED WAIVER OF SECTION 20.19(d)(2)  
OF THE COMMISSION'S RULES**

Pursuant to Sections 1.3 and 1.925 of the Commission's rules, Buffalo-Lake Erie Wireless Systems Co., L.L.C. ("BLEW") hereby requests a temporary and limited waiver of Section 20.19(d)(2) of the Commission's rules.<sup>1</sup> Specifically, BLEW seeks a limited waiver of the Commission's September 18, 2006 deadline for inductive coupling ("T-coil") requirements for hearing aid-compatible ("HAC") phones.<sup>2</sup> Although BLEW will offer one compliant handset, as a result of unforeseen manufacturer delays and the demand for compliant handsets by other wireless carriers, BLEW will be unable to offer a second compliant handset by the September 18<sup>th</sup> deadline. BLEW is diligently attempting to obtain a second compliant handset, but has been unsuccessful and therefore seeks a limited waiver of Section 20.19(d)(2) until December 31, 2006 or until such time as it is able to offer a second compliant handset, whichever is earlier.

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<sup>1</sup> 47 C.F.R. §§ 1.3, 1.925, 20.19(d)(2).

<sup>2</sup> Section 20.19(d)(2) requires that public mobile service providers offer at least two handset models per air interface by September 18, 2006 that meet the FCC's T-coil HAC standard, *i.e.*, T3 or higher, and make available in each retail store owned and operated by the provider all of these handset models for consumers to test in the store. *See* 47 C.F.R. § 20.19(d)(2).

For the reasons set forth below, grant of a waiver is consistent with the public interest, convenience and necessity.

## **BACKGROUND**

BLEW is a small “Tier III” wireless carrier licensed to provide commercial wireless service in Western New York and Northwestern Pennsylvania pursuant to six broadband Personal Communications Services (“PCS”) licenses. BLEW acquired these licenses in December 2003 and launched commercial operations in August 2004. As BLEW has explained in its previously filed semi-annual HAC status reports, it purchases its handsets from Brightpoint, Inc. and other distributors and has virtually no ability to influence product development or selection. BLEW must therefore rely on the range of commercially available products available to it through these indirect sales channels. As discussed herein, BLEW is currently able to obtain only one digital CDMA wireless handset that meets the T-Coil standard, the Samsung SCH-A870. BLEW is currently in compliance with its existing M-rating and other HAC obligations.

## **DISCUSSION**

The Commission may waive any of its rules for good cause shown, and will grant a request for waiver if the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>3</sup> As explained below, because BLEW is dependent on the availability of compliant handsets from its vendors, given the limited supply of such handsets it is unable to timely offer a

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<sup>3</sup> See 47 C.F.R. §§ 1.3, 1.925(b)(3); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *see also Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

second compliant phone at this time. As such, BLEW has no reasonable alternative to waiver and the limited relief requested herein is warranted under the Commission's waiver standards.

As the Commission has recognized, wireless carriers are largely dependent on the availability of equipment from manufacturers with respect to equipment-related deadlines, and HAC compliance is no exception.<sup>4</sup> These problems are particularly acute for Tier III carriers.<sup>5</sup> HAC technology has proven technically complex for vendors; as the Commission is aware, handset manufacturers have only recently been able to obtain the necessary certifications to comply with the T-coil requirement. Compliant products are therefore only beginning to be offered to carriers for retail distribution. Unfortunately, BLEW, like most small Tier III carriers, cannot create a direct relationship with handset manufacturers, but instead purchases handsets from third party distributors; even with the purchasing power of these distributors, their needs, and the needs of their customers, are often placed behind the requirements of the large carriers, particularly as new model handsets are made available into the distribution chain.

BLEW is able to offer one compliant handset at this time and BLEW continues its efforts to secure access to a second compliant model. Given the limited availability of compliant handsets, it has been unsuccessful to date in these efforts. Nevertheless, given its efforts to secure one model, BLEW has demonstrated good cause for a temporary and limited waiver of the rule to allow it additional time to obtain and offer a second handset model that meets the Commission's T-coil standard.

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<sup>4</sup> See *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3) of the Commission's Rules, Memorandum Opinion and Order*, 20 FCC Rcd. 15147, ¶ 7 (2005) (waiver warranted in case where carrier's "handset vendor informed [it] that the given handsets failed to achieve certification of compliance with the required U3 rating"); see also *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd. 14841, ¶¶ 11-13, 17 (2002) ("*Non-Nationwide Carriers' E911 Stay Order*").

<sup>5</sup> See *Non-Nationwide Carriers' E911 Stay Order* at ¶¶ 11-13.

By offering one compliant handset, BLEW believes it will be able to meet the needs of those few potential customers who require T-coil hearing aid devices over the next several months. Thus, the impact on customers is less significant than if no such handsets were available.<sup>6</sup> For these reasons as well, waiver is consistent with the public interest.<sup>7</sup> Strict enforcement of the T-coil deadline against BLEW would be inequitable and unduly burdensome, especially given that BLEW has no reasonable alternative to achieve compliance due to the delays experienced by the manufacturers.

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<sup>6</sup> Indeed, if the rules were strictly enforced, BLEW's ability to only offer one compliant handset would effectively require BLEW to limit its total handset offerings to three, thus limiting the availability of innovative handsets BLEW customers. See 47 C.F.R. § 20.19(e) (*de minimis* exemption).

<sup>7</sup> Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, Memorandum Opinion and Order, 20 FCC Rcd. 15108, ¶ 9 ("Cingular Waiver Order") (grant of waiver "avoids the unintended consequence of delaying introduction of dual-band digital wireless phones that otherwise could be used by consumers with and without hearing disabilities").

## CONCLUSION

For the reasons stated above, BLEW seeks a limited waiver of Section 20.19(d)(2) until December 31, 2006 or until such time as it is able to offer a second compliant handset, whichever is earlier. Grant of the instant waiver request is consistent with the public interest, convenience and necessity. BLEW seeks limited relief, as it is cautiously optimistic that additional models will be more widely available to carriers before year-end, although if necessary BLEW may request that the Commission revisit the matter at that time if necessary.<sup>8</sup>

Respectfully submitted,

**BUFFALO-LAKE ERIE WIRELESS SYSTEMS CO.,  
L.L.C.**

By: /s/ Brian Gelfand  
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<sup>8</sup> The relief initially requested here is just over one calendar quarter – substantially less than the duration of the relief afforded in the *Cingular Waiver Order*. Indeed, the company hopes to obtain access to compliant handsets well in advance of the December 31, 2006 date.